

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

<p>STATE OF OKLAHOMA,</p> <p style="padding-left: 40px;">Plaintiff</p> <p>and</p> <p>CHEROKEE NATION,</p> <p style="padding-left: 40px;">Plaintiff/Intervenor,</p> <p>v.</p> <p style="padding-left: 40px;">TYSON FOODS, INC., et. al,</p> <p style="padding-left: 80px;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. 05-cv-329-GKF</p>
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INTERVENOR’S COMPLAINT

COMES NOW the Plaintiff, the Cherokee Nation, ex rel. A. Diane Hammons, the duly appointed and confirmed Attorney General of the Cherokee Nation, and alleges as follows:

I. NATURE OF THE CASE

1. Millions of chickens and turkeys, owned by the Poultry Integrator Defendants, are raised annually on thousands of farms throughout the Illinois River Watershed (the "IRW"), and include, without limitation, birds raised for food products ("broilers"), birds raised for egg production ("layers") and birds raised for breeding and resupply purposes ("breeders" and "pullets"). These "poultry growing operations" result in the generation of hundreds of thousands of tons of poultry waste for which the Poultry Integrator Defendants are legally responsible. It has been, and continues to be, the Poultry Integrator Defendants' practice to store and dispose of this waste on the lands within the IRW -- a practice that has caused injury to the IRW, including the biota, lands, waters and sediments therein. The Poultry Integrator Defendants are responsible

for this injury. Accordingly, pursuant to federal law, the Cherokee Nation brings this action against the Poultry Integrator Defendants seeking, *inter alia*, abatement of these practices, expenses for assessing the injury and damage to the IRW (including the biota, lands, waters and sediments therein) caused by these practices, restoration of the injury to the IRW (including the lands, waters and sediments therein) caused by these practices, damages for the lost value and restoration of the natural resources of the IRW caused by these practices, and equitable relief.

II. JURISDICTION & VENUE

2. The Cherokee Nation is asserting (these) claims under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.* The Cherokee Nation also asserts claims under the federal common law of nuisance, nuisance and trespass. Therefore, pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1362, 28 U.S.C. § 1367, 42 U.S.C. § 9613(b) this Court has jurisdiction over the subject matter of this lawsuit.

3. The Cherokee Nation has suffered injury to the IRW, including the biota, lands, waters and sediments therein, as a result of the Poultry Integrator Defendants' wrongful acts and omissions. The IRW, including the lands, waters and sediments therein, is situated, in part, in the Northern District of Oklahoma. As such, venue is proper in this Court pursuant to 42 U.S.C. § 9613(b). Further, a substantial part of the events or omissions giving rise to the claims being asserted herein occurred within the Northern District of Oklahoma, and a substantial part of the property that is the subject to the action is situated in the Northern District of Oklahoma. As such, venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b).

4. Personal jurisdiction is properly exercised over each of the Poultry Integrator Defendants named herein in that each has engaged in acts or omissions within and outside of the Cherokee Nation that have injured the IRW, including the biota, lands, waters and sediments

therein, in the Cherokee Nation and / or has deliberately engaged in significant activities in the Cherokee Nation amounting to continuous and systematic contacts with the Cherokee Nation.

See Fed. R. Civ. P. 4(e), (k).

III. THE PARTIES

A. Plaintiff

5. The Cherokee Nation is a federally recognized Indian tribe. In 1838, pursuant to a negotiated Treaty, the Nation received a fee patent from the United States for lands in Northeast Oklahoma, which include all of the IRW that is located within the exterior boundaries of the State of Oklahoma. The Cherokee Nation, without limitation, has an interest in the beds of navigable rivers to their high water mark, as well as waters running in definite streams. The Cherokee Nation, by and through its Attorney General, brings this action on its own behalf and as *parens patriae* on behalf of the residents and citizens of the Cherokee Nation.

B. Poultry Integrator Defendants

6. Poultry Integrator Defendant Tyson Foods, Inc. is a Delaware corporation with its principal place of business in Arkansas. At times pertinent to this complaint, Poultry Integrator Defendant Tyson Foods, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Tyson Foods, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

7. Poultry Integrator Defendant Tyson Poultry, Inc. is a Delaware corporation with its principal place of business in Arkansas. At times pertinent to this complaint, Poultry Integrator Defendant Tyson Poultry, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Tyson Poultry, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

8. Poultry Integrator Defendant Tyson Chicken, Inc. is a Delaware corporation with its principal place of business in Arkansas. At times pertinent to this complaint, Poultry Integrator Defendant Tyson Chicken, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Tyson Chicken, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

9. Poultry Integrator Defendant Cobb-Vantress, Inc. is a Delaware corporation with its principal place of business in Arkansas. At times pertinent to this complaint, Poultry Integrator Defendant Cobb-Vantress, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the

business of Poultry Integrator Defendant Cobb-Vantress, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

10. Poultry Integrator Defendant Cal-Maine Foods, Inc. is a Delaware corporation with its principal place of business in Mississippi. At times pertinent to this complaint, Poultry Integrator Defendant Cal-Maine Foods, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Cal-Maine Foods, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

11. Poultry Integrator Defendant Cal-Maine Farms, Inc. is a Delaware corporation with its principal place of business in Mississippi. At times pertinent to this complaint, Poultry Integrator Defendant Cal-Maine Farms, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Cal-Maine Farms, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

12. Poultry Integrator Defendant Cargill, Inc. is a Delaware corporation with its principal place of business in Minnesota. At times pertinent to this complaint, Poultry Integrator Defendant Cargill, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Cargill, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

13. Poultry Integrator Defendant Cargill Turkey Production, LLC is a Delaware corporation with its principal place of business in Minnesota. At times pertinent to this complaint, Poultry Integrator Defendant Cargill Turkey Production, LLC, individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Cargill Turkey Production, LLC, has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

14. Poultry Integrator Defendant George's, Inc. is an Arkansas corporation with its principal place of business in Arkansas. At times pertinent to this complaint, Poultry Integrator Defendant George's, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their

agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant George's, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

15. Poultry Integrator Defendant George's Farms, Inc. is an Arkansas corporation with its principal place of business in Arkansas. At times pertinent to this complaint, Poultry Integrator Defendant George's Farms, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant George's Farms, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

16. Poultry Integrator Defendant Peterson Farms, Inc. is an Arkansas corporation with its principal place of business in Arkansas. At times pertinent to this complaint, Poultry Integrator Defendant Peterson Farms, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Peterson Farms, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

17. Poultry Integrator Defendant Simmons Food, Inc. is an Arkansas corporation with its principal place of business in Arkansas. At times pertinent to this complaint, Poultry Integrator Defendant Simmons Food, Inc., individually and / or by and through its duly authorized agents, servants, employees and / or contractors who were and are acting in the course and scope of their agency, servitude, employment and / or contracts and in the furtherance of the business of Poultry Integrator Defendant Simmons Food, Inc., has been engaged in poultry growing operations in the IRW, and is responsible for the poultry waste created by these poultry growing operations, its handling and storage, and its disposal on lands within the IRW and the resultant injury to the IRW, including the biota, lands, waters and sediments therein.

18. Defendants named above are collectively referred to as the "Poultry Integrator Defendants."

19. Unless otherwise noted, each and every count alleged herein applies to each and every Poultry Integrator Defendant.

IV. FACTUAL ALLEGATIONS

A. The Illinois River Watershed

20. The 1,069,530-acre Illinois River Watershed ("IRW") straddles the Oklahoma-Arkansas border. The approximately 576,030 acres of the IRW that are located in Oklahoma include portions of Delaware, Adair, Cherokee and Sequoyah counties. All of the 576,030 acres of the IRW that are located within the exterior boundaries of Oklahoma also lie within the treaty boundaries of the Cherokee Nation.

21. Within the IRW is the Illinois River, as well as its major tributaries, including the Baron (a/k/a Barren) Fork River, the Caney Creek and the Flint Creek. All of these running

waters have been, and are, used by the Cherokee Nation and its citizens for recreation, fishing, and other purposes.

22. The Illinois River and its tributaries are viewed as outstanding water resources for, *inter alia*, recreation, fish and wildlife propagation and aesthetic values.

23. The Illinois River feeds into the 12,900 acre Tenkiller Ferry Lake, which has been described as "the emerald jewel in Oklahoma's crown of lakes."

24. Among the recreational uses for which the resources of the Illinois River, its tributaries, Tenkiller Ferry Lake and the adjoining lands have been justly noted are floating (canoes, kayaks and rafts), fishing, camping, swimming, diving, hiking and sightseeing.

25. Additionally, the waters of the IRW have been used, and are used, and may in the future be used as a source of drinking water.

26. In recent years these resources have been and are continuing to be polluted and degraded, and their uses have been and are continuing to be injured and impaired.

27. This pollution of and injury to the IRW, including the biota, lands, waters and sediments therein, are indivisible.

28. The Poultry Integrator Defendants, by virtue of their poultry waste disposal practices, are responsible for this pollution of, as well as the degradation of, impairment of and injury to the IRW, including the biota, lands, waters and sediments therein.

B. The Poultry Integrator Defendants' Domination and Control of the Actions and Activities of Their Respective Poultry Growers

29. Each of the Poultry Integrator Defendants is in the business of producing poultry and / or poultry products for sale and use / consumption in the United States and internationally.

30. Each of the Poultry Integrator Defendants is intimately involved in and controls each stage of the poultry growing process.

31. Each of the Poultry Integrator Defendants raises its birds itself and / or contracts with "growers" to raise its birds.

32. The contracts establishing the growing arrangements between the respective Poultry Integrator Defendants and their poultry growers are presented to the poultry growers with no opportunity to negotiate their essential terms, and constitute contracts of adhesion.

33. Under the terms of a typical contract for broilers, for example, a poultry grower agrees to raise to adulthood a flock of chicks and / or poultts belonging to a respective Poultry Integrator Defendant.

34. Each of the Poultry Integrator Defendants supplies the chicks and / or poultts to its respective poultry growers, and picks up the birds from its respective poultry growers when the birds reach maturity.

35. The birds are owned by the respective Poultry Integrator Defendants throughout the entire growing process.

36. Additionally, each of the respective Poultry Integrator Defendants formulates, provides and owns the feed that is fed to its birds during the growing process. The constituents found in poultry waste are influenced by the feed formulas.

37. Further, each of the Poultry Integrator Defendants dictates to its respective poultry growers all aspects of the care and handling for its birds. Specifically, each of the Poultry Integrator Defendants dictates to its respective poultry growers, without limitation:

- a. the type of the buildings, equipment and other facilities used in the poultry grower's operation;
- b. the feed to be fed to the birds;
- c. the feed supplements to be fed to the birds;

- d. the medications and vaccinations to be provided to the birds; and
- e. the environmental conditions under which the birds are raised.

38. During the growing process, each of the Poultry Integrator Defendants makes numerous periodic site visits to its respective poultry growers' poultry growing operations to ensure compliance with its dictates regarding the care and handling of its birds.

39. Each of the Poultry Integrator Defendants is similarly intimately involved in and controls each stage of the poultry growing process with respect to layer, breeder and pullet growing operations.

40. In sum, each of the Poultry Integrator Defendants so dominates and controls the actions and activities of its respective poultry growers that the relationship is not one of independent contractor, but rather one of employer and employee or one of principal and agent, and one of owner, operator or arranger of poultry waste under CERCLA.

41. Alternatively, even should the relationship with the Poultry Integrator Defendants be one of independent contractor, the Poultry Integrator Defendants have known and have had reason to know that in the ordinary course of the poultry growers raising birds in the usual and prescribed manner poultry waste will be handled and disposed of in such a manner to cause injury to the IRW, including the biota, lands, waters and sediments therein, and therefore the Poultry Integrator Defendants are legally responsible for their respective poultry growers' poultry waste and its environmental impacts.

42. Additionally, many of the Poultry Integrator Defendants themselves own poultry growing operations. At these operations, too, the respective Poultry Integrator Defendants control all aspects of the care and handling of the birds and are, therefore, owners, operators or arrangers of poultry waste under CERCLA.

C. The Poultry Integrator Defendants' Poultry Waste Generation

43. Poultry growing operations within the IRW are estimated to generate hundreds of thousands of tons of poultry waste per year.

44. Because each of the respective Poultry Integrator Defendants at all times owns its birds being raised within the IRW, because each of the respective Poultry Integrators at all times formulates and owns the feed being fed to its birds being raised within the IRW, and because each of the respective Poultry Integrator Defendants at all times so dominates and controls the actions and activities of its respective poultry growers with respect to the growing of its birds as well as controlling its own poultry growing operations, the Poultry Integrator Defendants are responsible for the safe handling and disposal of the poultry waste generated in the course of the poultry growing operations associated with their respective birds.

D. The Poultry Integrator Defendants' Improper Poultry Waste Disposal Practices and Their Impact

45. Each of the Poultry Integrator Defendants has long known that it has been and continues to be the practice to routinely and repeatedly improperly store the poultry waste generated in the course of its respective growing operations on lands within the IRW

46. Each of the Poultry Integrator Defendants has long known that it has been and continues to be the practice to dispose of the poultry waste generated in the course of its respective growing operations by routinely and repeatedly applying it to lands within the IRW.

47. Each of the Poultry Integrator Defendants has long known that the application of poultry waste to lands within the IRW, in the amounts that it is applied, is in excess of any agronomic need and is not consistent with good agricultural practices and, as such, constitutes waste disposal rather than any normal or appropriate application of fertilizer.

48. Each of the Poultry Integrator Defendants has long known that the application of its poultry waste to lands within the IRW, in the amounts that it is applied and with the frequency that it is applied, far exceeds the capacity of the soils and vegetation to absorb those nutrients present in the poultry waste.

49. Each of the Poultry Integrator Defendants has long known that these poultry waste disposal practices lead to the run-off and release of large quantities of phosphorus, pollutants and contaminants in the poultry waste onto and from the fields and into the waters of the IRW.

50. Each of the Poultry Integrator Defendants has long known that the application of poultry waste to lands within the IRW causes large quantities of phosphorus, pollutants and contaminants to accumulate in the soils. At many locations, phosphorus, pollutants and contaminants have built up in the soil to such an extent that, even without any additional application of poultry waste to the land, the excess residual phosphorus, pollutants and contaminants will continue to run-off and be released into the waters of the IRW in the future.

51. Despite this knowledge, each of the Poultry Integrator Defendants has, by virtue of its contracts, arranged for its respective growers to take possession of the poultry waste coming from its birds. Each of the Poultry Integrator Defendants has made this arrangement with full knowledge that the growers were annually placing hundreds of thousands of tons of their poultry waste directly on the ground and that these actions would lead to the run off and release of phosphorus, pollutants and contaminants into the lands and waters of the IRW.

52. Simply put, each of the Poultry Integrator Defendants has long known that poultry waste is an enormous contributor to phosphorus and other pollution in the IRW. Nevertheless, each of the Poultry Integrator Defendants continues to allow large amounts of its respective

poultry waste to be improperly stored and applied on lands within the IRW each year (hereinafter "poultry waste disposal practices").

53. The Poultry Integrator Defendants' poultry waste disposal practices are not, and have not been, undertaken in conformity with federal and laws and regulations.

54. In sum, each of the Poultry Integrator Defendants has long known that such poultry waste disposal practices present the threat that constituents of poultry waste will run off and be released into and from the land to which the poultry waste is applied thereby potentially adversely impacting the IRW, including the biota, lands, waters and sediments therein, and that such practices have in fact resulted in constituents of poultry waste running off and being released into and from the land to which the poultry waste is applied thereby adversely impacting the IRW, including the biota, lands, waters and sediments therein.

55. Each of the Poultry Integrator Defendants has long known that poultry waste contains a number of constituents that can and do cause harm to the environment and pose human health hazards. These constituents include, but are not limited to:

- a. phosphorus / phosphorus compounds;
- b. microbial pathogens.

56. The lands and waters in the IRW in fact contain elevated levels of a number of such constituents.

57. The elevated levels of such constituents in the IRW, including in the lands, waters and sediments therein, as well as the resultant injury to the IRW, including the biota, lands, waters and sediments therein, have been caused by the Poultry Integrator Defendants' improper poultry waste disposal practices.

58. Phosphorus / phosphorus compounds and nitrogen / nitrogen compounds have been designated as hazardous substances under CERCLA. Elevated levels of phosphorus / phosphorus compounds can cause periodic algae blooms, excessive algal growths, hypolimnetic anoxia and other adverse impacts, and have in fact caused periodic algae blooms, excessive algal growths, hypolimnetic anoxia and other adverse impacts in the waters of the IRW, resulting in eutrophication, a degradation in water quality and sediments, injury to biota and impaired uses.

59. Elevated levels of microbial pathogens, including e. coli and other coliforms, campylobacter, enterococci, salmonella and staphylococcus, are known to be present in poultry waste. These microbial pathogens are toxic and can cause illness when they are ingested by human beings and biota.

V. CAUSES OF ACTION

A. Count 1: CERCLA Cost Recovery -- 42 U.S.C. § 9607

60. The Cherokee Nation realleges and incorporates herein the foregoing allegations of this Complaint, and further alleges as follows:

61. By and through the Poultry Integrator Defendants' activities and operations, "hazardous substances" within the meaning of CERCLA, 42 U.S.C. § 9601(14), including but not limited to phosphorus and phosphorus compounds were disposed of in the IRW, including the lands, waters and sediments therein, resulting in "releases" and/or "threatened releases" of hazardous substances within the meaning of CERCLA, 42 U.S.C. § 9601(22), into the IRW, including the lands, waters and sediments therein.

62. The IRW, including the lands, waters and sediments therein, constitutes a "site or area where a hazardous substance . . . has been deposited, stored, disposed of, or placed, or otherwise come to be located;" and, as such, constitutes a "facility" within the meaning of

CERCLA, 42 U.S.C. § 9601(9). Furthermore, the grower buildings, structures, installations and equipment, as well as the land to which the poultry waste has been applied, also constitute a "facility" within the meaning of CERCLA, 42 U.S.C. § 9601(9), from which the "releases" and / or "threatened releases" of "hazardous substances" into the IRW, including the lands, waters and sediments therein, resulted.

63. Each of the Poultry Integrator Defendants is a "person" within the meaning of CERCLA, 42 U.S.C. § 9601(21).

64. The Poultry Integrator Defendants are covered persons within the meaning of CERCLA, 42 U.S.C. § 9607(a), in that they, individually and collectively, have arranged for the disposal of their poultry waste which contains hazardous substances, including but not limited to phosphorus and phosphorus compounds which have been released to and within the IRW, including the lands, waters and sediments therein, and these hazardous substances have been released within the IRW, including the lands, waters and sediments therein.

65. Additionally, the Poultry Integrator Defendants are covered persons within the meaning of CERCLA, 42 U.S.C. § 9607(a), in that they, individually and collectively, have been owners and / or operators during the time their poultry waste containing these hazardous substances was generated and disposed of and released into the IRW, including the lands, waters and sediments therein.

66. As a result of responding to these releases or threatened releases of hazardous substances by the Poultry Integrator Defendants into the IRW, including the lands, waters and sediments therein, the Cherokee Nation has incurred, and will continue to incur, necessary response costs in a manner consistent with the National Contingency Plan ("NCP"), or

alternatively, in a manner not inconsistent with the NCP. These costs include, but are not limited to, costs of monitoring, assessing and evaluating water quality, wildlife and biota in the IRW.

67. Accordingly, the Cherokee Nation is entitled to recover from the Poultry Integrator Defendants, jointly and severally, all of the Cherokee Nation's past and present necessary response costs under CERCLA § 107. Further, the Cherokee Nation is entitled to a declaratory judgment holding the Poultry Integrator Defendants liable, jointly and severally, for all future necessary response costs incurred by the Cherokee Nation.

B. Count 2: CERCLA Natural Resource Damages -- 42 U.S.C. § 9607

68. The Cherokee Nation realleges and incorporates herein the foregoing allegations of this Complaint, and further alleges as follows:

69. The Cherokee Nation, is the designated CERCLA trustee for "natural resources" in, belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the Cherokee Nation and shall assess damages to natural resources for purposes of CERCLA for those natural resources under their trusteeship.

70. By and through the Poultry Integrator Defendants' activities and operations, "hazardous substances" within the meaning of CERCLA, 42 U.S.C. § 9601(14), including but not limited to phosphorus and phosphorus compounds were disposed of in the IRW, including the biota, lands, waters and sediments therein, resulting in "releases" and/or "threatened releases" of hazardous substances within the meaning of CERCLA, 42 U.S.C. § 9601(22), into the IRW, including the lands, waters and sediments therein.

71. The IRW, including the lands, waters and sediments therein, constitutes a "site or area where a hazardous substance . . . has been deposited, stored, disposed of, or placed, or otherwise come to be located;" and, as such, constitutes a "facility" within the meaning of

CERLCA, 42 U.S.C. § 9601(9). Furthermore, the grower buildings, structures, installations and equipment, as well as the land to which the poultry waste has been applied, also constitute a "facility" within the meaning of CERCLA, 42 U.S.C. § 9601(9), from which the "releases" and / or "threatened releases" of "hazardous substances" into the IRW, including the lands, waters and sediments therein, resulted.

72. Each of the Poultry Integrator Defendants is a "person" within the meaning of CERCLA, 42 U.S.C. § 9601(21).

73. The Poultry Integrator Defendants are covered persons within the meaning of CERCLA, 42 U.S.C. § 9607(a), in that they, individually and collectively, have arranged for the disposal of their poultry waste which contains hazardous substances, including but not limited to phosphorus and phosphorus compounds which have been released to and within the IRW, including the lands, waters and sediments therein, and these hazardous substances have been released within the IRW, including the lands, waters and sediments therein.

74. Additionally, the Poultry Integrator Defendants are covered persons within the meaning of CERCLA, 42 U.S.C. § 9607(a), in that they, individually and collectively, have been owners and / or operators during the time their poultry waste containing these hazardous substances was generated, disposed of and released into the IRW, including the lands, waters and sediments therein.

75. As a result of the release of hazardous substances by the Poultry Integrator Defendants into the IRW, including the lands, waters and sediments therein, there has been injury to, destruction of, and loss of natural resources in the IRW, including the land, fish, wildlife, biota, water, drinking water supplies and all other such resources therein, for which the Cherokee Nation is trustee.

76. This injury to, destruction of, and loss of natural resources in the IRW, including the land, fish, wildlife, biota, water, drinking water supplies and all other such resources therein, for which the Nation is trustee, is continuing.

77. The natural resources that have been and continue to be injured, destroyed, or lost as a result of the release of hazardous substances by the Poultry Integrator Defendants include, but are not limited to the land, fish, wildlife, biota, water, drinking water supplies and all other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Cherokee Nation.

78. The Cherokee Nation has incurred reasonable and necessary costs to assess and evaluate this injury, destruction and loss of the natural resources.

79. Accordingly, the Poultry Integrator Defendants are jointly and severally liable to the Cherokee Nation as trustee under CERCLA 107 for damages for injury to, destruction of, and loss of these natural resources in the IRW, including the land, fish, wildlife, biota, water, drinking water supplies and all other such resources therein, including but not limited to (a) the cost to restore, replace, or acquire the equivalent of such natural resources; (b) the compensable value of lost services resulting from the injury to such natural resources; and (c) the reasonable cost of assessing injury to the natural resources and the resulting damages.

C. Count 3: Federal Common Law Nuisance

80. The Cherokee Nation realleges and incorporates herein the foregoing allegations of this Complaint, and further alleges as follows:

81. As a result of their poultry waste disposal practices, the Poultry Integrator Defendants have intentionally carried on an activity that has caused and is causing an

unreasonable invasion of, interference with, impairment to, inconvenience to, annoyance to and injury to the Cherokee Nation and the public's beneficial use and enjoyment of the IRW, including the biota, lands, waters and sediments therein.

82. Additionally, as a result of their poultry waste disposal practices, the Poultry Integrator Defendants have intentionally carried on an activity that has significantly threatened to cause and is significantly threatening to cause an unreasonable invasion of, interference with, impairment to, inconvenience to, annoyance to and injury to the Cherokee Nation and the public's beneficial use and enjoyment of the IRW, including the biota, lands, waters and sediments therein.

83. Furthermore, as a result of their poultry waste disposal practices, the Poultry Integrator Defendants have intentionally carried on an activity that has caused and is causing unreasonable and substantial danger to the public's health and safety in the IRW, including the lands, waters and sediments therein.

84. Additionally, as a result of their poultry waste disposal practices, the Poultry Integrator Defendants have intentionally carried on an activity that has significantly threatened to cause and is significantly threatening to cause unreasonable and substantial danger to the public's health and safety in the IRW, including the lands, waters and sediments therein.

85. Such conduct thereby constitutes a nuisance under applicable federal law. The injuries caused thereby are substantial, tangible and continuing, and are both temporary and permanent. The continuation of such conduct threatens irreparable harm.

86. The Poultry Integrator Defendants have at all times pertinent to this complaint known that an invasion of, interference with and impairment of the Cherokee Nation's and the public's beneficial use and enjoyment of the IRW, including the biota, lands, waters and

sediments therein, as well as the creation of an unreasonable and substantial danger to the public's health and safety, have resulted from, or have been substantially certain to result from, their wrongful poultry waste disposal practices.

87. By reason of the foregoing, the Cherokee Nation is entitled to equitable relief, including but not limited to an injunction requiring each and all of the Poultry Integrator Defendants to abate their pollution-causing conduct, to remediate the IRW, including the lands, waters and sediments therein, and to pay all costs associated with quantifying the amount of restoration and natural resource damages as well as the amount of natural resource damages itself.

88. By reason of the foregoing, the Cherokee Nation has also incurred, and will incur in the future, damages, including special and direct damages, costs and expenses as a result of the nuisance for which it is entitled to receive compensation and reimbursement from the Poultry Integrator Defendants, jointly and severally.

89. Exemplary and punitive damages should also be awarded based on the Poultry Integrator Defendants' reckless and intentional indifference to and disregard of the public's health and safety in the IRW, including the lands, waters and sediments therein.

VI. PRAYER FOR RELIEF

Wherefore, the Cherokee Nation respectfully requests that this Court enter judgment against the Poultry Integrator Defendants, jointly and severally, on each of the claims alleged above and award the following relief:

1. All past monetary damages suffered by and all costs and expenses incurred by the Cherokee Nation as a result of and in connection with the Poultry Integrator Defendants' past wrongful conduct;

2. A declaration that the Poultry Integrator Defendants are liable for all future monetary damages suffered by and all costs and expenses incurred by the Cherokee Nation as a result of and in connection with the continuing effects of the Poultry Integrator Defendants' past wrongful conduct;

3. A permanent injunction requiring each and all of the Poultry Integrator Defendants to immediately abate their pollution-causing conduct in the IRW, to remediate the IRW, including the lands, waters and sediments therein, to take all such actions as may be necessary to abate the imminent and substantial endangerment to the health and the environment, and to pay all costs associated with assessing and quantifying the amount of restoration and natural resource damages as well as the amount of natural resource damages itself;

4. Restitution in an amount sufficient to make the Cherokee Nation whole for the loss and damages it has suffered on account of the Poultry Integrator Defendants' improper poultry waste disposal practices and pollution of the IRW, including the lands, waters and sediments therein, as well as disgorgement of all gains the Poultry Integrator Defendants realized in consequence of their wrongdoing;

5. Punitive and exemplary damages, to the maximum extent allowable under the law;

6. Prejudgment interest;

7. All attorneys fees and costs of suit (including but not limited to court costs, expert and consultant costs, and litigation and investigative expenses); and

8. All such other and further relief as is just and appropriate.

VII. JURY DEMAND

The Cherokee Nation requests a trial by jury on all issues so triable.

Respectfully submitted,

/s/ A. Diane Hammons

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CERTIFICATE OF SERVICE

I certify that on the 2nd day of September, 2009, I electronically transmitted the attached document to the court's electronic filing system, which will send the document to the following ECF registrants:

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